

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 31, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 146, 406, 504, HB 794, 3/24/2005
Executive Action: None

HEARING ON SB 406

Sponsor: SEN. JIM SHOCKLEY, SD 45, VICTOR

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 406**, Fund civil legal assistance for indigent victims of domestic violence.

SEN. SHOCKLEY explained that the bill would increase the fee to \$10 for getting divorced with that money going into the Domestic Violence Fund.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 20}

Proponents' Testimony:

Klaus Sitte, Montana Legal Services Association (MLSA), rose in support of SB 406 and stated that on April 1, 2005 the funding will run out for MLSA. He continued to talk about the benefits that the MLSA will derive from this increase in fees.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 60}

Ed Higgins, Manager, Intake/Advice, Montana Legal Services Association, spoke to the committee about the scenarios that his unit handles when people call for help.

{Tape: 1; Side: A; Approx. Time Counter: 60 - 86}

Beth Baker, State Bar of Montana, spoke to the committee about the Pro Bono work that lawyers are encouraged to provide.

{Tape: 1; Side: A; Approx. Time Counter: 86 - 106}

Pam Bucy, Assistant Attorney General, rose in support of SB 406 and explained to the committee how this fee will help "close the gap" in funding.

{Tape: 1; Side: A; Approx. Time Counter: 106 - 116}

Nancy Sweeney, Lewis and Clark Clerk of District Court, rose in support of SB 406 and spoke to the committee about what may happen when there is inadequate representation for people with legal matters to resolve.

{Tape: 1; Side: A; Approx. Time Counter: 116 - 140}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of SB 406 and spoke to the committee about the various services that her clients may need and that 44 of the 56 counties are in danger of losing federal funding.

{Tape: 1; Side: A; Approx. Time Counter: 140 - 173}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked the sponsor to explain the difference between Section 3 and Section 4. **SEN. SHOCKLEY** explained that they each relate to a different Section of the MCA Code.

REP. KOOPMAN spoke with Ms. Baker about the number of attorneys in Montana and the amount of Pro Bono work that is donated by them. They continued to discuss whether or not it would be helpful to have an amendment allowing attorneys to do Pro Bono work without going through MLSA. **Ms. Baker** replied that the attorney would need to go through MLSA to be able to verify and track the numbers of hours they work Pro Bono cases.

REP. NOONAN spoke with the SENATOR about the fiscal note regarding the technical note on Page 2 regarding the waived money.

{Tape: 1; Side: A; Approx. Time Counter: 173 - 310}

Closing by Sponsor:

SEN. SHOCKLEY closed the hearing on SB 406 and stated that the \$10 fee increase will go to Montana Legal Services Association and the attorneys will receive a \$500 tax credit for during the Pro Bono work.

{Tape: 1; Side: A; Approx. Time Counter: 310 - 327}

HEARING ON SB 146

Sponsor: **SEN. DANIEL MCGEE, SD 29, LAUREL**

Opening Statement by Sponsor:

SEN. DAN MCGEE (R), SD 29, opened the hearing on **SB 146,** Statewide public defender system. **SEN. MCGEE** rose to inform the committee that this bill was brought as the result of a lawsuit that the ACLU filed against the State of Montana for failing to provide legal representation for indigent citizens.

He continued to explain and refer to the exhibits that were distributed to the committee members.

[EXHIBIT\(juh68a01\)](#)

[EXHIBIT\(juh68a02\)](#)

[EXHIBIT\(juh68a03\)](#)

[EXHIBIT\(juh68a04\)](#)

[EXHIBIT\(juh68a05\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 327 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 40}

Proponents:

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, rose in support of SB 146 and explained to the committee the background of the lawsuit and SB 146. He stated that if this matter is not resolved; the lawsuit will go forward and the trial will start May 31, 2005.

{Tape: 1; Side: B; Approx. Time Counter: 40 - 124}

Gordon Morris, Montana Association of Counties (MACo), rose in support of SB 406 and referred to the exhibits for much of his testimony.

[EXHIBIT\(juh68a06\)](#)

[EXHIBIT\(juh68a07\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 124 - 243}

Pam Bucy, Assistant Attorney General, rose in support of SB 146 and spoke on behalf of Attorney General, Mike McGrath, who postponed the trial so that the Legislature would have a chance to resolve this matter.

She continued to speak about the related expenses from three juvenile murder cases. For instance, in the Bar Jonah case, the defense costs were more than \$600,000.

Dave Ewer, Budget Director, State of Montana, rose in support of SB 146 and stated that this Legislature, "...must pass this piece of legislation."

{Tape: 1; Side: B; Approx. Time Counter: 297 - 330}

Ron Waterman, attorney, rose in support of SB 146 and began his testimony about being the lead attorney in the ACLU v. State of Montana since February, 2002.

Mr. Waterman explained that currently there is no accounting being done, no one has been audited. He then spoke about the expense incurred, for instance, if 100 people are sentenced (inappropriately) to the Montana State Prison (MSP) at the rate of \$50,000 per year, that is costing the State of Montana, \$50 million per year.

[EXHIBIT\(juh68a08\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 243 - 500}

Linda Stoll, Missoula County, rose in support of SB 146 and referred to Page 28, Line 4, regarding the entitlement funding. She is in agreement with MACo's amendment and will welcome the chance for an audit of the funding issues.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 46}

Alec Hanson, Montana League of Cities and Towns, rose in support of SB 146 and spoke to the entitlement shares that are paid in the larger cities, whereas, in the smaller towns, those towns pay nothing.

{Tape: 2; Side: A; Approx. Time Counter: 46 - 70}

Dennis Paxinos, Yellowstone County Attorney, Montana County Attorneys Association, rose in support and stated that this bill may not be going far enough. He stated that the Appellate Court should be separate.

{Tape: 2; Side: A; Approx. Time Counter: 70 - 96}

Bill Hooks, attorney, rose in support of the bill and also spoke in support of the headquarters being located in Helena.

{Tape: 2; Side: A; Approx. Time Counter: 96 - 123}

Chad Wright, State Appellate Office, rose in support of SB 146 and spoke to the committee about the cases where the Montana Supreme Court had ruled that a defendant's legal counsel had been ineffective.

{Tape: 2; Side: A; Approx. Time Counter: 123 - 176}

Randi Hood, Lewis and Clark Public Defender, rose in support of SB 146 and spoke to the committee regarding the provision for people who do not meet the federal levels of poverty and also rose in favor of placing the headquarters in Helena.

{Tape: 2; Side: A; Approx. Time Counter: 176 - 217}

Jacqueline Lenmark, ACLU, spoke to the committee in support of SB 146 and discussed the coordination between the ACLU and the AG office. She did speak to the location of the office as to Butte or Helena.

EXHIBIT(juh68a09)

{Tape: 2; Side: A; Approx. Time Counter: 217 - 289}

Jani McCall, City of Billings, rose in support of SB 146 and spoke to the committee about the public defenders office in Billings. **Ms. McCall** agreed that there must be consistency throughout the state.

{Tape: 2; Side: A; Approx. Time Counter: 289 - 297}

Eric Olson, Cascade County Public Defender, rose in support and spoke to the committee about the positive aspect of the consistency that this bill will provide.

{Tape: 2; Side: A; Approx. Time Counter: 297 - 335}

Charles Brooks, Yellowstone Board of County Commissioners, rose in support of Gordon Morris's amendment.

{Tape: 2; Side: A; Approx. Time Counter: 335 - 340}

Scott Crichton, ACLU, spoke in support of SB 146.

[EXHIBIT\(juh68a10\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 340 - 360}

Opponents' Testimony: None

Informational Testimony:

Bill Penn, Butte-Silverbow Economic Development Office, rose in support of SB 146, especially for the office to be located in the City of Butte. **Mr. Penn** spoke of the low costs to rent, willing labor force and the close availability to Montana State Prison (MSP).

[EXHIBIT\(juh68a11\)](#)

[EXHIBIT\(juh68a12\)](#)

[EXHIBIT\(juh68a13\)](#)

[EXHIBIT\(juh68a14\)](#)

[EXHIBIT\(juh68a15\)](#)

[EXHIBIT\(juh68a16\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 360 - 401}

Questions from Committee Members and Responses:

REP. HARRIS spoke with **SEN. MCGEE** about the amendment proposed by MACo and the costs being borne by the six largest counties in Montana, etc. **SEN. MCGEE** replied that he would prefer to leave the bill "as is." **REP. HARRIS** and **SEN. MCGEE** discussed the vacation issue as to who would pay the costs for carried over vacation, followed by a discussion as to the "standards" and training that would be required for the public defenders.

REP. EVERETT spoke with the sponsor regarding the attorneys that would be hired by the State.

REP. EVERETT then spoke with Ms. Bucy regarding the minimum standards that would need to be met for these attorneys to provide services through the State.

[EXHIBIT\(juh68a17\)](#)

REP. MCGILLVRAY continued this line of questioning with the sponsor and broached the idea of having an "attorney consortium" of private attorneys that would be able to provide services where there may be a conflict of interest.

REP. KOOPMAN questioned **SEN. MCGEE** about whether or not this service is even needed. **SEN. MCGEE** responded that the Legislature should not be writing legislation based on the Supreme Court's ruling and that the Supreme Court should not tell the Legislature what they should be doing. He continued to explain how this bill was drafted and the information from other states that was considered in the drafting.

They continued their conversation regarding the training and standardization of the training.

REP. KOOPMAN commented that, in his opinion, public defenders are not always the most "competent" attorneys and wondered if a paralegal would be able to handle some of the cases that an attorney would otherwise handle. **SEN. MCGEE** stated that the interim committee would look at the other levels of legal representation.

REP. GUTSCHE spoke with the sponsor about the situation where the public defenders would become State employees. They continued their discussion as to the federal poverty level and how that would be applicable to indigent Montanans.

REP. GUTSCHE then posed some questions to Ms. Stoll regarding the entitlement payments and audit that Ms. Stoll spoke of in her previous testimony.

REP. NOONAN spoke with the sponsor regarding the location of the office being in Butte. The **REPRESENTATIVE** posed the same question to Ms. Bucy. **Ms. Bucy** replied that the Attorney General does not have a position on that matter.

REP. RICE questioned the SENATOR about what had happened to the bill that was proposed in the 2003 Legislature. **SEN. MCGEE** explained what happened to HB 124 to the committee members and then spoke briefly about the expenses that would be incurred initially for SB 146.

{Tape: 2; Side: A; Approx. Time Counter: 401 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 198}

Closing by Sponsor:

SEN. MCGEE closed the hearing on SB 146 and spoke to the amendment that was proposed regarding the entitlement issue raised by Ms. Stoll. He continued to address the eligibility criteria that the indigent population would need to meet to receive the services of a public defender. The **SENATOR** also spoke about the training and standardization of the new public defenders.

SEN. MCGEE spoke specifically to Page 85 regarding the "time lines" that the interim committee set forth for the implementation of the statewide public defenders system. He finished his closing by stating, "...this work was not being driven by the lawsuit with the ACLU; the people in the State who do not receive legal representation could have also sued the State without the public defender system in place...."

EXHIBIT (juh68a18)

{Tape: 3; Side: A; Approx. Time Counter: 198 - 500}

HEARING ON HB 794

Sponsor: REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 794**, Create criminal and civil penalties for violations of the right to know. The **REPRESENTATIVE** explained to the committee that this bill would do two things:

- 1) It would extend the criminal violation for open meetings violation.
- 2) It would stop taxpayers from paying for the violation by public officials.

REP. GALLIK continued with his presentation to the committee regarding his proposal to put a "cap" on the amount of awarded settlements and that the public officials of elected official are required to pay for the violation. He concluded by stating that there is an alternative to this bill and then a proposal for a study resolution for HB 794.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 98}

Proponents' Testimony:

John Shontz, Montana Newspaper Association, rose in support of HB 794 and informed the committee that Montana has one of the best "Sunshine Laws" in the nation; however, ranks fifth from the bottom in terms of follow-through of the law. He continued to speak about the topics that REP. GALLIK had introduced in his opening of HB 794.

[EXHIBIT\(juh68a19\)](#)

[EXHIBIT\(juh68a20\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 98 - 290}

Andson Crutcher, self, rose in support of HB 794 and spoke about the tremendous lack of compliance with the current statute.

{Tape: 3; Side: B; Approx. Time Counter: 290 - 333}

Jan Anderson, self, rose in support and as the editor of the Boulder Monitor and the Jefferson County Courier, spoke of the related story of the Jefferson County Commissioners that had violated the current statute.

[EXHIBIT\(juh68a21\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 333 - 390}

Jennifer Smith-Mitchell, self, rose in support HB 794 and spoke to the violations of public officials.

{Tape: 3; Side: B; Approx. Time Counter: 390 - 470}

Judy Smith, self, rose in support of HB 794.

{Tape: 3; Side: B; Approx. Time Counter: 470 - 478}

John Barrows, Montana Newspaper Association, stood in support of HB 794.

{Tape: 3; Side: B; Approx. Time Counter: 478 - 482}

Quincy Orhai, self, rose in support of HB 794.

[EXHIBIT\(juh68a22\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 482 - 491}

Jim Foley, Montana Newspaper Association, rose in support of HB 794.

{Tape: 3; Side: B; Approx. Time Counter: 491 - 495}

Name neither legible nor audible, Bozeman Deaconess Hospital, rose in support of HB 794.

{Tape: 3; Side: B; Approx. Time Counter: 495 - 500}

Tom Magorski, self, rose in support of HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 5}

Opponents' Testimony:

John Alke, Montana Taxpayers Association, spoke of the balance needed in the law and related two stories to the committee of the "Public Right to Know" lawsuits.

{Tape: 4; Side: A; Approx. Time Counter: 5 - 101}

Dan Schwarz, Yellowstone County, rose in opposition of HB 794 and spoke to the committee about the problems within this bill and what the bill proposed to do.

{Tape: 4; Side: A; Approx. Time Counter: 101 - 153}

Tom Lithgoe, Jefferson County Commissioner, rose in opposition to HB 794 and spoke of the lawsuit that he as a commissioner was involved in with Jefferson County.

{Tape: 4; Side: A; Approx. Time Counter: 153 - 196}

Tom Schneider, Public Service Commission, rose in opposition to HB 794 and spoke to the committee about his dealings with public documents, some of them trade secrets, and how this bill would be counter-productive to his work.

{Tape: 4; Side: A; Approx. Time Counter: 196 - 225}

Fred VanValkenberg, Montana County Attorneys Association, Missoula County Attorney, spoke to the committee about how the county attorney would be the "enforcer" of the law.

{Tape: 4; Side: A; Approx. Time Counter: 225 - 259}

Gordon Morris, Montana Association of Counties (MACo), rose in opposition to HB 794 and spoke to the revenue problems he saw in the fiscal note.

{Tape: 4; Side: A; Approx. Time Counter: 259 - 265}

Alec Hanson, Montana League of Cities and Towns, rose in opposition to HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 265 - 277}

Frank Garner, Montana Chiefs of Police, rose to oppose HB 794 and stated that this is anti-victim legislation.

{Tape: 4; Side: A; Approx. Time Counter: 277 - 296}

Kevin Braun, Department of Administration, spoke in opposition to HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 296 - 303}

Patti Borsberry, Secretary of State Office, rose in opposition to HB 794.

EXHIBIT(juh68a23)

{Tape: 4; Side: A; Approx. Time Counter: 303 - 319}

Diana Koch, Department of Corrections, rose to oppose HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 319 - 326}

Lance Melton, Montana School Board Association, rose to oppose HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 326 - 333}

Erik Burke, MEA/MFT, rose to oppose HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 333 - 335}

Dave Puryer, Montana Rural Education Association, rose in opposition to HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 335 - 337}

Tim Shanks, Great Falls Police Department, rose to oppose HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 337 - 341}

Jani McCall, City of Billings, rose to oppose HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 341 - 344}

Dallas Smilie, Department of Administration, rose to oppose HB 794.

{Tape: 4; Side: A; Approx. Time Counter: 344 - 357}

Elwood English, Secretary of State Office, rose to oppose HB 794.

[EXHIBIT\(juh68a24\)](#)

{Tape: 4; Side: A; Approx. Time Counter: 357 - 364}

Please Note: The following individuals also opposed HB 794, but time had run out:

Bill Deal, Whitefish Police Department

Nancy Butler, State Fund

Mary Phippen, Clerks of District Court

Bob Read, Missoula Police Department

Mark Turmear, City of Bozeman

Tom Schneider, Montana Public Employees Association

Bill Dove, Montana Police Protective Association

Russ Kado, Department of Public Health and Human Services

Harry Payne, Human Relations, City of Helena

Bob Worthington, Montana Insurance Authority

Connie Wrigley, Secretary of State Office

[EXHIBIT\(juh68a25\)](#)

[EXHIBIT\(juh68a26\)](#)

{Tape: 4; Side: A; Approx. Time Counter: 364 - 412}

Informational Testimony:

Chris Tweeten, Chief Civil Prosecutor, Office of the Attorney General, spoke of the letter from an attorney in Missoula regarding a cigarette manufacturer and the trade secret issue.
{Tape: 4; Side: A; Approx. Time Counter: 412 - 500}

Questions from Committee Members and Responses:

REP. NOENNIG spoke to the sponsor regarding the limit on damages that may be awarded.

REP. NOONAN also spoke with the sponsor regarding the protection of an employee and in the hiring of an attorney.

REP. KOOPMAN questioned the sponsor about the proposed amendment.
{Tape: 4; Side: B; Approx. Time Counter: 0 - 76}

Closing by Sponsor:

REP. GALLIK concluded the hearing on HB 794 and requested the committee **TABLE HB 794** and do the proposed HJR that was distributed to the committee members. He stated that the "conversation needs to continue" but this has been a start.
EXHIBIT(juh68a27)
{Tape: 4; Side: B; Approx. Time Counter: 76 - 110}

HEARING ON SB 504

Sponsor: **SEN. RICK LAIBLE, SD 44, VICTOR**

Opening Statement by Sponsor:

SEN. RICK LAIBLE (R), SD 44, opened the hearing on **SB 504**, Specify the use of annual attorney license tax.
{Tape: 4; Side: B; Approx. Time Counter: 110 - 157}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG questioned the sponsor about the costs and the amount generated. **SEN. LAIBLE** replied that the amount would not exceed \$69.

{Tape: 4; Side: B; Approx. Time Counter: 157 - 178}

Closing by Sponsor:

SEN. LAIBLE closed the hearing on SB 504

{Tape: 4; Side: B; Approx. Time Counter: 178 - 190}

ADJOURNMENT

Adjournment: 12:58 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh68aad0.TIF](#))